IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

WP(C).No. 39067 of 2003(A)

PETITIONER:

SHRI E.K. MOHAMMED IQUBAL, TRADING UNDER THE NAME AND STYLE "HINDUSTAN RUBBERS", IRUMBUCHOLA, A.R.NAGAR.P.O., MALAPPURAM, KERALA 676 305.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD, REPRESENTED BY ITS SECRETARY, VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

2. THE ASSISTANT ENGINEER, ELECTRICAL SECTION, TIRURANGADI.

3. THE DEPUTY CHIEF ENGINEER, ANTI POWER THEFT SQUAD, THIRUVANANTHAPURAM.

4. THE ELECTRICAL INSPECTOR, MALAPPURAM.

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 39067/2003 A

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE FORMAL APPLICATION DT. 20/4/01.

EXT.P2. COPY OF THE PROCEEDINGS OF THE R2 DT. 16/5/2001.

EXT.P3. COPY OF THE PROCEEDINGS OF THE R2 DT. 4/3/03.

EXT.P4. COPY OF THE MG AGREEMENT DT. 28/4/2003.

EXT.P5. COPY OF THE APPLICATION FORM DT. 17/7/2003 ALONGWITH A COVERING LETTER DT. 18/07/2003.

EXT.P6. COPY OF THE JUDGMENT DT. 12/11/2003 IN WPC NO. 33499/03.

EXT.P7. COPY OF THE MAHAZAR PREPARED BY APTS DT. 7/3/2003.

EXT.P8. COPY OF THE DEMAND DATED 10/3/2003 FOR RS. 14,34,914/-

EXT.P9. COPY OF THE MAHAZAR DT. 11/3/2003 PREPARED BY CI OF POLICE.

EXT.P10. COPY OF THE REPORT OF THE R4 TO THE CI OF POLICE THIRURANGADI DT. 28/3/2003.

EXT.P11. COPY OF THE REPRESENTATION DT. 12/3/2003.

EXT.P11A. COPY OF THE REPRESENTATION OF THE PETITIONER TO THE R3 DT. 30/5/2003.

EXT.P12. COPY OF THE JUDGMENT DT. 7/4/2003 IN OP NO. 11811/2003.

EXT.P13. COPY OF THE PROCEEDINGS OF THE R3 DT 30/09/03.

EXT.P14. COPY OF THE DEMAND DTD. 22/11/2003 FOR RS. 5,14,910/- ALONGWITH COMPUTATION STATEMENT.

EXT.P15. COPY OF THE AMENDMENT NOTIFICATION DT. 30/12/2002.

EXT.P16. COPY OF THE REPRESENTATION DT. 23/09/2003.

EXT.P17. COPY OF THE JUDGMENT DT. 27/3/2003 IN OP NO. 10493/2003.

RESPONDENT'S EXHIBITS **NIL.**

True copy

tga

KURIAN JOSEPH, J.

W.P.(C) NO. 39067 OF 2003

Dated this the 23rd day of November, 2007.

J U D G M E N T

The writ petition is filed mainly with the following prayers :-

a) Issue a writ of certiorari calling for the records leading upto Ext. P13, P14 as also Ext. P8 and quash the same.

b) Issue a writ of mandamus directing the respondents 1 to 3 to repay to the petitioner the amount of Rs. 3,16,703/- already paid pursuant to Ext. P8 and the wrongly levy for additional load till date.

As far as penalty for unauthorised connected load is concerned, it is now settled law in view of the Bench decision of this Court in W.A.1231/03 that the penalty has to be limited to the fixed charge portion. It is held that there shall not be any penalty by way of proportionate energy charges. The impugned demands are quashed making it clear that the liability of the petitioner shall only be for the penalty for fixed charge portion. The revised demand shall be issued to the petitioner and the amounts already remitted by the petitioner shall be adjusted.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

smp